

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY  
AVERAGE WHOLESALE PRICE LITIGATION

MDL No. 1456  
Master File No. 01-12257-PBS

**DECLARATION OF THEODORE M. HESS-MAHAN  
IN SUPPORT OF NON-PARTY EMPIRE BLUE CROSS BLUE SHIELD'S  
ASSENTED TO MOTION FOR LEAVE TO FILE REPLY IN FURTHER SUPPORT OF  
MOTION TO QUASH SUBPOENA SEEKING DEPOSITION TESTIMONY  
AND FOR A PROTECTIVE ORDER**

I, Theodore M. Hess-Mahan, hereby declare:

1. I am an associate with the law firm of Shapiro Haber & Urmy LLP, which represents Empire Blue Cross Blue Shield ("Empire"), a non-party in this action. I submit this declaration in support of Empire's Motion for Leave to File Under Seal Exhibits D and E to its Reply Memorandum of Law in Further Support of its Motion to Quash Subpoena Seeking Deposition Testimony and for a Protective Order ("Reply"). I make this declaration based on my own personal knowledge.

2. Exhibits D and E attached to Empire's Reply contain transcripts of the deposition testimony of Christopher Eddy, who is Empire's regional manager for provider relations in the upstate and mid-Hudson regions of New York, and Linda Monteforte, Empire's director of pharmacy, regarding confidential and proprietary information relating to Empire's reimbursement for physician-administered drugs and its confidential business relationships with, inter alia, subscribers, doctors and hospitals. Empire has designated the testimony of its deposition witnesses as "HIGHLY CONFIDENTIAL" pursuant to the Protective Order entered in this case on December 13, 2002 (the "Protective Order").

I hereby declare under penalty of perjury that the foregoing is true and correct.

Executed on this 20<sup>th</sup> day of September 2005.

/s/Theodore M. Hess-Mahan  
Theodore M. Hess-Mahan